

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**

**VEENU DUGAL**

Applicant

Veenu Duggal

Gulshan (Mark) Duggal

For the Application

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OZAH Case No. CU 17-09

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Robin Rice

Neither in Support or Opposition

Of the Application

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Before: Lynn A. Robeson, Hearing Examiner

**HEARING EXAMINER'S REPORT AND DECISION**

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## **I. STATEMENT OF THE CASE**

On December 2, 2016, the Applicant, Veenu Duggal, filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children in her home at 17216 Vestry Court, Rockville, Maryland. She owns the property with her husband, Gulshan Duggal. Exhibit 15. Mr. Duggal filed a letter consenting to this application. Exhibit 24. The Applicant currently runs a Family Day Care (“Veenu D Childcare) for up to eight children in her home, a use permitted by right, and wishes to expand to 12 children. Exhibit 25. Child care facilities up to 12 individuals must be approved by conditional use under §59-3.4.4.D of the Montgomery County Zoning Ordinance.<sup>1</sup> The subject property is Lot 63, Block G of the Mill Creek South Subdivision, which is zoned R-90. Exhibit 6.

On February 7, 2017, the Office of Zoning and Administrative Hearings (OZAH) sent notice of a public hearing to be held on March 24, 2017. Exhibit 22. Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued its report on February 16, 2017, recommending approval of the application subject to the following conditions (Exhibit 27(a), p. 2):

1. The proposed Group Day Care facility is limited to 12 children up to 7 years in age.
2. Non-resident employees are limited to two.
3. The hours of operations are limited to Monday through Friday, 7:00 A.M. to 6:00 P.M.
4. The Applicant must schedule staggered drop-off and pick-up of children with no more than two vehicles entering and exiting the site in any 15-minute period. The Applicant must provide parental agreements for all children to the Hearing Examiner indicating that the drop-off and pick-ups will be staggered as conditioned.
5. No more than six children may play outside at any one time, except for up to four times a year when, during special events, no more than 12 children are permitted to be outside at any one time.
6. Outside play time may not occur prior to 9:15 A.M. or after 5:15 P.M.

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<sup>1</sup> All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

In its Report, Staff also noted that, “[D]uring the site visit Staff noticed that the structural members were deteriorating with age and some of the railing planks were partially coming off the deck.”

Exhibit 27(a), p. 5.

The Planning Board considered the application on March 7, 2017, and voted unanimously to recommend approval with the conditions recommended by Staff. The Board also stated (Exhibit 27):

While it is not a criterion for evaluating a conditional use, the Planning Board deemed it necessary to bring the condition of the existing deck in the backyard to your attention for further evaluation since it needs a repair or replacement and extends above the outdoor play area for the children. During the hearing, the Applicant indicated that he is amenable to repairing or replacing the deck.

The Planning Board also recommended approval of a waiver of the requirement to provide one bicycle storage space on the property. Exhibit 27.

The public hearing proceeded as scheduled on March 24, 2017. Mr. and Mrs. Duggal testified in support of the application. Mrs. Duggal agreed with the findings of the Staff Report and adopted them as her own testimony. She agreed to abide by most of the conditions recommended by Staff, but requested a modification of Condition No. 5. She asked to have all 12 children outside in the late morning to settle them down for naps or rest time. T. 11. She agreed to a condition proposed by the Hearing Examiner permitting this between 11:00 a.m. and 12:00 p.m. She submitted signatures of parents that will be enrolled in the daycare agreeing to specified drop-off and pick-up times that are in compliance with Staff’s recommended Condition No. 4. Exhibit 30. She testified that there is ample on-street parking if parents arrive before or after their scheduled time. In response to the Planning Board’s recommendation relating to the deck, Mrs. Duggal submitted photographs of the deck showing that it has been repaired. Exhibit 31. She agreed to a condition requiring that she keep the deck in a structurally sound and safe condition.

T. 17. Mr. Gulshan also testified in support of the application. He co-owns the property and agreed to be bound by all conditions of approval. T. 18.

Ms. Robin Rice appeared at the public hearing as well. She testified that she has recently filed an application for a child day care with OZAH and felt that she could help Mrs. Duggal with the proposed conditions because they were impossible to comply with. According to Mrs. Duggal, State regulations require that children be taken outside each day, even in inclement weather. She asked Mrs. Duggal how she would comply with the State's requirement to take children outdoors when it is raining. Mrs. Duggal responded that she did not take children outside in inclement weather. T. 20.

The record closed on April 3, 2017, for receipt of the transcript. For the following reasons, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV.

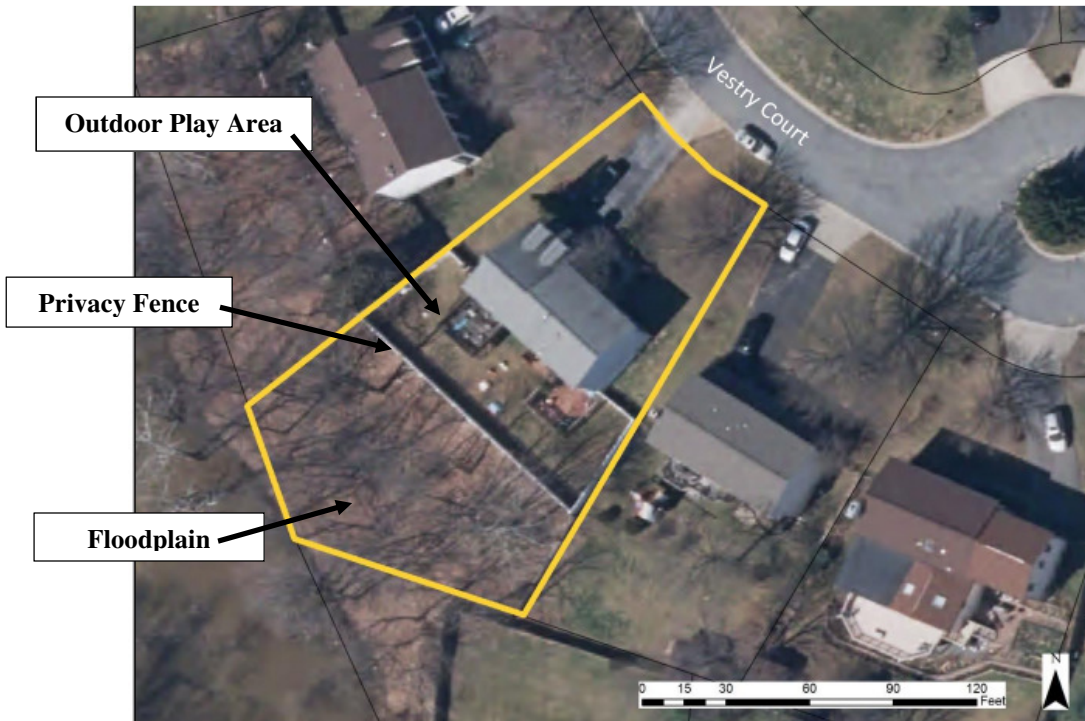
## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The subject property is improved with a two-story, single-family detached house with a partial basement and a two-car garage. Staff advises that the driveway measures approximately 17 feet wide and 65 feet long and has parking for six vehicles in addition to two spaces in the garage. Exhibit 27(a), p. 2.

Landscaping in the front yard includes shrubs on each side of a concrete walkway leading to the main entrance and two mature cherry trees. The western side yard contains a flower garden and a shrub. Exterior lighting includes two wall-mounted lamps on each side of the front door and one wall-mounted lamp on the top left corner of the garage door. The portion of the rear yard closest to the home is devoted to an outside play area for the day care. It is screened by a 6-foot

high privacy fence. The portion of the rear yard outside of the fenced area is within the 100-year floodplain and its buffer. *Id.* An aerial photograph of the subject property from the Staff Report and a photograph of the front of the home) are shown below (Exhibit 27(a)):





## B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as “generally bounded by Midcounty Highway to the north; Intercounty Connector to the south; Shady Grove Road to the east; and by a stream valley to the west. Exhibit 27(a), p.

3. It is depicted in an aerial photograph provided by Technical Staff (Exhibit 27(a), p. 4):



Staff characterized the neighborhood as consisting of single-family residential properties and a cluster of 31 townhouses along Weather Drive in the R-90 Zone in the southern portion of the neighborhood. There are no conditional uses or special exceptions within the area. The above

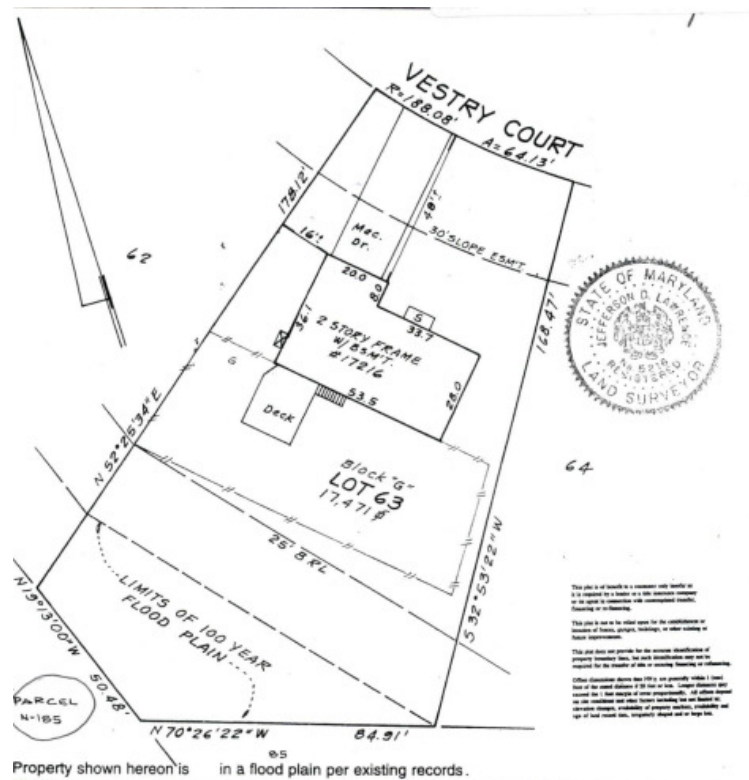
photograph supports Staff's delineation and the Hearing Examiner finds that the neighborhood's character is primarily single-family detached homes with some single-family attached residences.

### C. Proposed Use

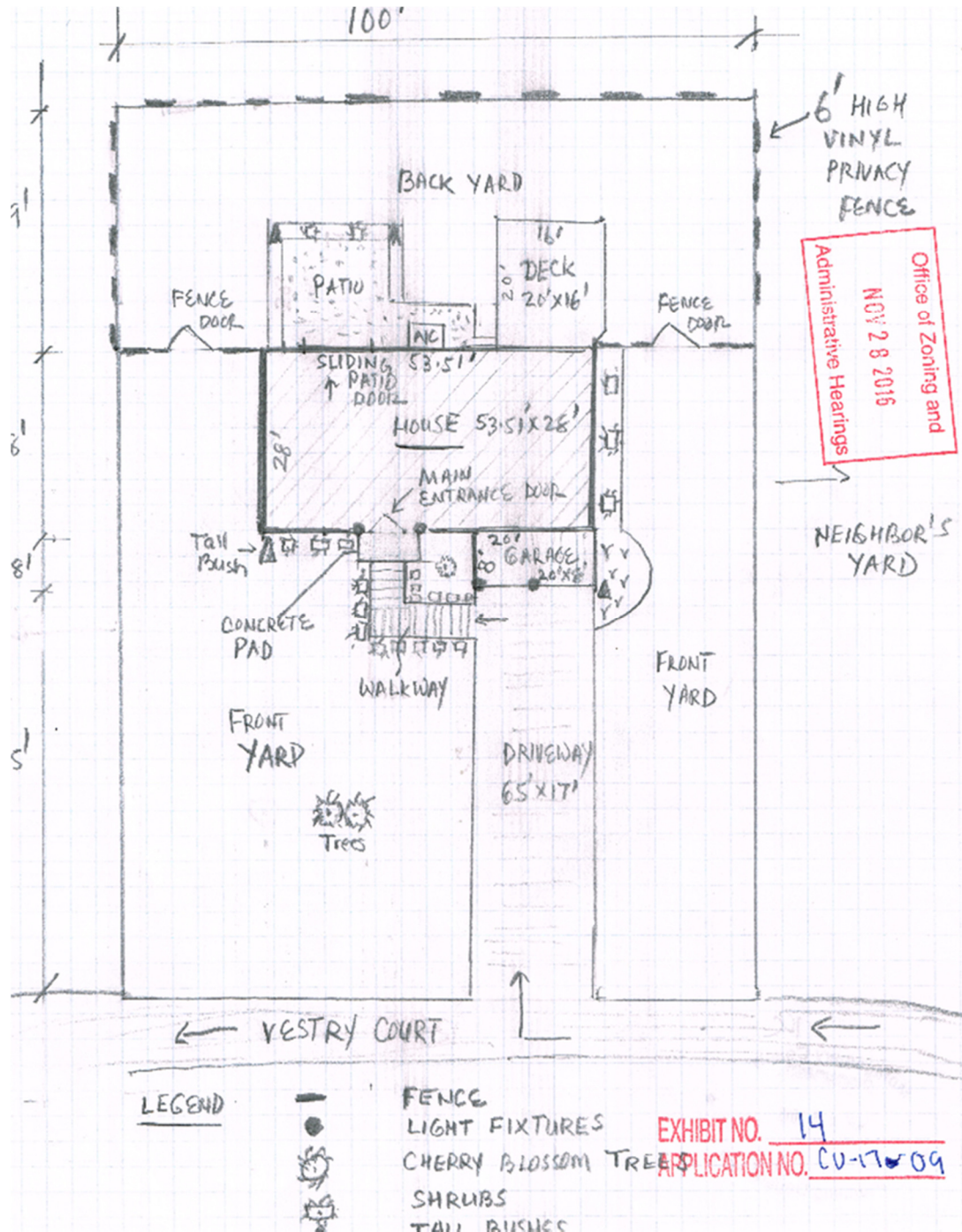
Mrs. Duggal has operated a family day care for up to 8 children in her home since 1995. Exhibit 25. She states that, over the last several years, she has experienced a surge in demand for spaces and has had to turn away potential clients. Exhibit 25. Mrs. Duggal submitted 8 letters of support from existing clients supporting her application. Exhibit 18. She now desires to increase the daycare to up to 12 children to satisfy the demand and permit siblings to attend the same day care. T. 17.

#### 1. Site Plan, Landscape Plan and Lighting Plan

The house location survey, in this case the conditional use site plan, identifies the location of the physical improvements to the property (Exhibit 10, below):

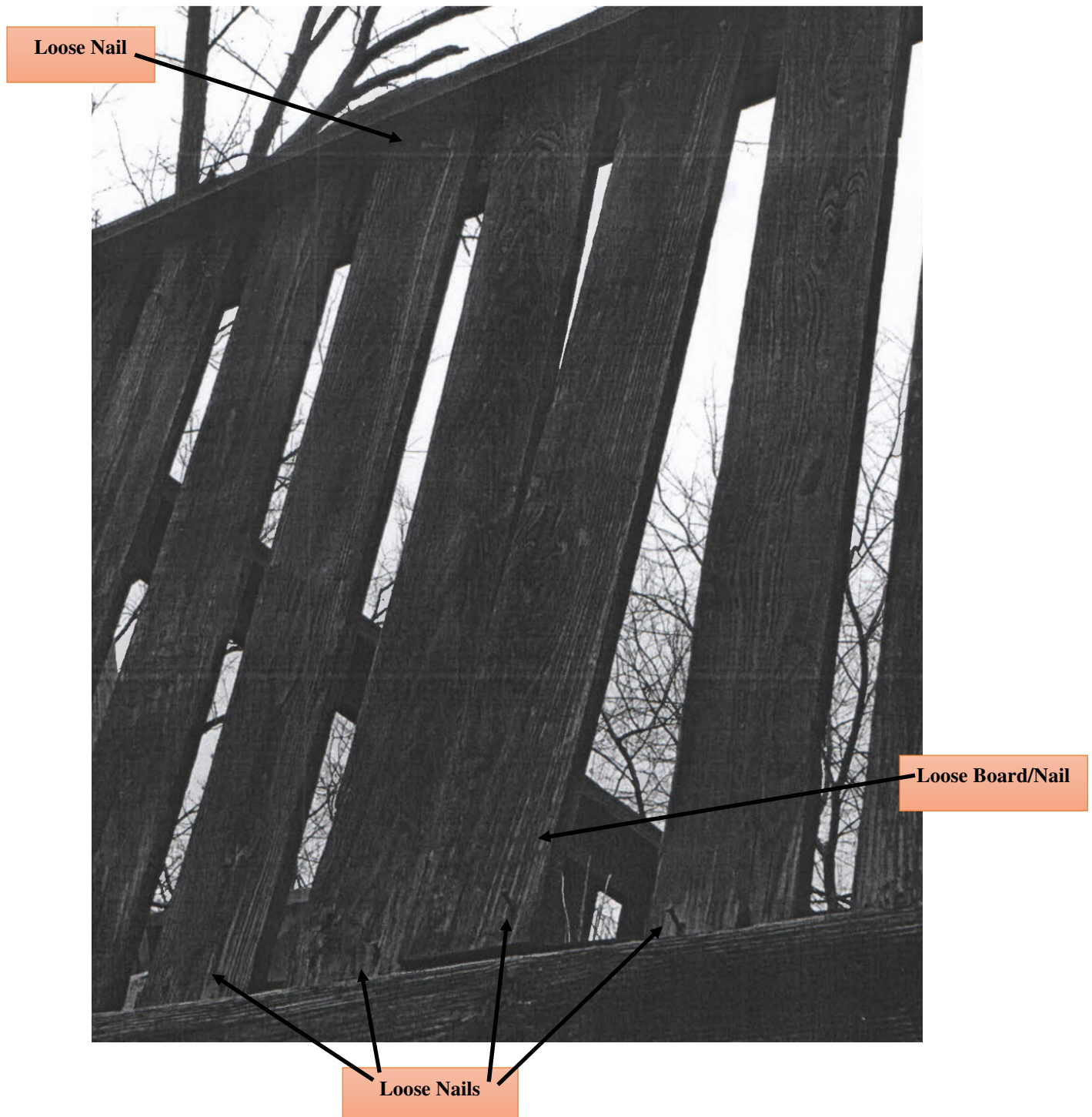


The Applicant proposes no changes to the existing lighting or landscaping on the property. Exhibit 27(a), p. 13. The Landscape and Lighting Plan (Exhibit 14, below) shows the deck and patio in the rear yard in more detail:





At the public hearing, Mrs. Duggal testified that she had repaired the unsafe portions of the deck of concern to the Planning Board. She submitted a photograph of repairs needed at the time of the Planning Board's hearing (Exhibit 31(a)), below:



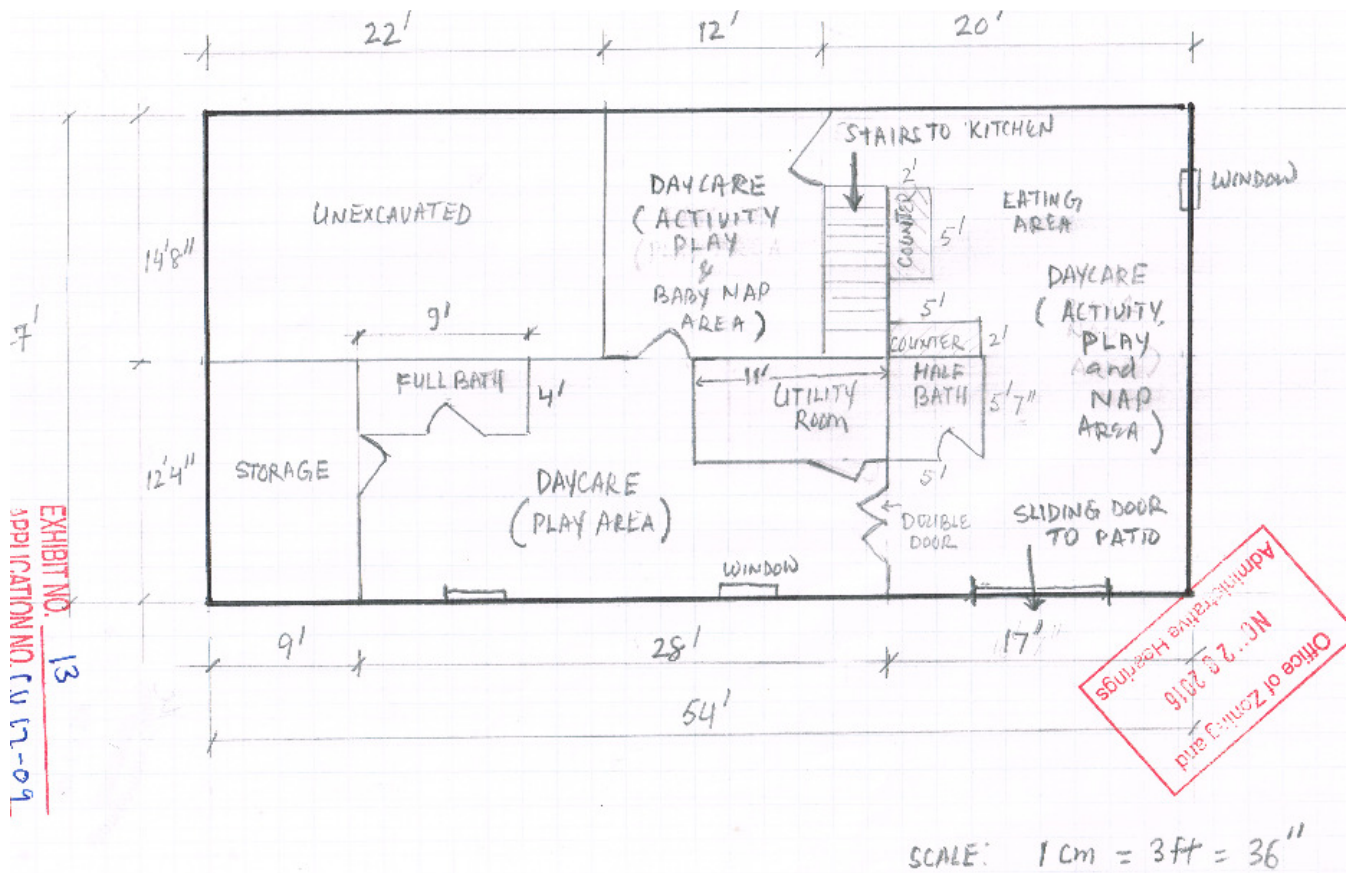
She testified that she has since repaired the deck and submitted a photograph of the same area of the deck after it had been repaired (Exhibit 31(b), below). She agreed to comply with a condition of approval requiring her to maintain the deck in a structurally sound and safe condition.

T. 17.



## 2. Operations

Mrs. Duggal testified that her existing day care operates between 7:00 a.m. and 6:00 p.m., Monday through Friday. Currently she has one part-time non-resident employee. If the conditional use is approved, she may make that employee full-time. Exhibit 9. Currently, the part-time employee works from 10:00 a.m. to 1:00 p.m. and 3:30 p.m. to 5:30 p.m. The lower level of the home is dedicated to the daycare. It has a walk out patio door to the outside play area, which is approximately 100-feet wide by 40-feet deep. Exhibit 27(a), p. 4.) The basement consists of approximately 963 square feet, divided into several activity and play areas, an eating area, and a baby nap area, as shown on the Floor Plan (Exhibit 13, below):



Staff advised the children play outside in groups no larger than six for approximately one hour in the morning and one hour in the afternoon. Exhibit 27(a), p. 5. Play equipment consists



of small slides, tricycles, and a play house. She does not permit the children to play music outside. *Id.* At the public hearing, however, Mrs. Duggal requested that she be allowed to have all of the children outside for one hour just before nap time. T. 11. According to her, she now has eight children outside and has had no complaints. Neighbors on both sides work during the day. T. 11-12. The outside play for the entire group helps settle them down for nap time in the afternoon. She agreed to a condition permitting her to have all children out between 11:00 a.m. and 12:00 p.m., when most of her neighbors are not home, but limiting the number of children outside to 6 at other times. T. 12. Photographs of the outdoor play area (Exhibit 27(a), Attachment 3) are shown below and on the next page:







### **3. Parking for Employees and for Parent Drop-Off and Pick-Up**

Three parking spaces are required for the proposed use—two for the residential use and one for each non-resident employee. *Zoning Ordinance*, §59-6.2.4. Staff concluded that the two parking spaces in the garage met the residential requirements and found that there is “ample” on-street parking on Vestry Court for two non-resident employees. There are six vehicle spaces for parent drop-off and pick-up on the large driveway. Parent drop-off and pick-up times are staggered from 7:30 a.m. to 9:30 a.m. and 4:45 p.m. to 6:00 p.m. Exhibit 27(a), p. 5. Mrs. Duggal submitted a list of assigned drop-off and pick-up times for parents currently enrolled and stated that she would abide by the pick-up and drop-off required by Staff’s recommended condition of approval. Exhibit 30.

### **D. Community Response**

The only person appearing at the public hearing was Ms. Robin Rice. She did not oppose the application; rather, she wished to help Mrs. Duggal because, according to Ms. Rice, OZAH’s

conditions of approval conflict with State law. T. 7. Ms. Rice explained that State law requires the children to go outside every day, even when it's raining. *Id.* Mrs. Duggal testified that she did not allow children to go outside in inclement weather. T. 19-20. Ms. Rice also testified that she has a pending conditional use application with OZAH. T. 5.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59-7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a Group Day Care for up to 12 children. *Zoning Ordinance* §59-3.4.4.D.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59-7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

#### **A. Necessary Findings (Section 59-7.3.1.E.)**

The general findings necessary to approve a conditional use are found in Section 59-7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner's conclusions for each finding, are set forth below:<sup>2</sup>

#### ***E. Necessary Findings***

##### ***1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:***

##### ***a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

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<sup>2</sup> Although §59-7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59-7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59-7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: Technical Staff advises that there are no previously approved conditional uses associated with this site. Exhibit 23, p. 9. Therefore, the Hearing Examiner finds that this standard is inapplicable to the subject application.

***b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;<sup>3</sup>***

Conclusion: This subsection requires an analysis of the standards of the R-90 Zone contained in Article 59-4; the use standards for Group Day Care for 9 to 12 Persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 27(a), pp. 9-15), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

***c. substantially conforms with the recommendations of the applicable master plan;***

Conclusion: The subject property lies within the geographic area covered by the 2006 Shady Grove Sector Plan (Plan). The Master Plan does not specifically discuss the subject site, but it supports having more child day care facilities in the area, “[A]s the planning area changes there will be an increased need for social services, especially child day care. Services such as elderly day care, teen programs, child day care, and recreation should be provided in convenient locations.” Plan, p. 102. Staff advises that the site lies within the “Derwood Communities” area designated in the Plan. The Plan recommends preserving the residential neighborhoods and

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<sup>3</sup> The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 21, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

protecting them from traffic congestion. Staff concluded that the proposed daycare met this condition (Exhibit 27(a), p. 6):

The Subject Site is an appropriate location for a day care facility. The existing eight-child day care facility has been on the Site for 21 years, and the proposal is a small expansion, which will not change the character of the neighborhood and will have a minimal projected increase in traffic. Therefore, the proposal is in substantial conformance with the Sector Plan.

The Hearing Examiner has no evidence contradicting Staff's conclusion and further finds that the large driveway, wide street, and the availability of on-street parking go far to minimize the impact of traffic related to the day care. Mrs. Duggal testified that the expansion was due to her desire to permit siblings to attend the day care together. Thus, some of the new children will not generate additional traffic. With the condition requiring staggered drop-off and pick-up times (in Part IV of this Report), the Hearing Examiner finds that the use as proposed substantially conforms to the Master Plan.

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;***

Conclusion: Technical Staff found that the proposed use meets this standard (Exhibit 27(a), p. 11) because the use already exists and there will be no physical changes to the site. The Hearing Examiner agrees. She found (in Part II.B) that the character of the area consists primarily of single-family detached homes with some single-family attached uses. From the front, there is little indication that the Duggal home is used for a daycare and existing landscaping and screening (including the privacy fence in the rear) adequately maintain the residential character of the property. Traffic will be controlled by staggering drop-offs and pick-ups and there is ample on-street and on-site parking. The Hearing Examiner has already found that the proposed use complies with the Master Plan. This standard has been met.



*e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Conclusion: Staff reports that there are no existing and approved conditional uses within the defined neighborhood. The existing daycare has been operating at this location since 1995. There will be no exterior changes to the existing home. Based on this evidence, the Hearing Examiner concludes that the use as proposed will not alter the residential nature of the area.

*f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*

*i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*

*ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

Conclusion: According to Technical Staff, the application does not require approval of a preliminary plan of subdivision. Exhibit 27(a), p. 12. Therefore, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities.

By its nature, a small child care facility operating within an existing single-family residence will not ordinarily create significant additional burdens for schools, police and fire protection, water, sanitary sewer and storm drainage. The only public facilities issue in this case concerns the demand on transportation facilities posed by the conditional use.

The adequacy of transportation facilities when no subdivision is required are evaluated under the Planning Board's Guidelines (Guidelines) for Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR), adopted January 24, 2013.<sup>4</sup> Applications that are expected to generate fewer than 30 trips are exempt from LATR review.

Staff concluded that the use will generate one additional peak-hour trip during the weekday morning and evening peak periods (i.e., 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m., respectively). The use generates up to 9 peak-hour trips during in total. As a result, a traffic study is not required under the Planning Board's Local Area Transportation Review Guidelines because the use will generate fewer than 30 trips. Exhibit 27(a), p. 7. A second test (i.e., Transportation Policy Area Review (TPAR) is intended to ensure that roadway and transit facilities in a larger geographic "policy area" are adequate to serve the facility. If inadequate, a tax is assessed based on the square footage of new development. This property is within the Derwood Policy Area, which is inadequate for transit. However, as the Applicant is proposing no additional square footage, the TPAR test is met and no tax may be assessed.

***g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:***

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<sup>4</sup> After this application was filed but before the Planning Board's review, the Council adopted a new Subdivision Staging Policy (SSP). *Council Resolution 18-671*, adopted November 15, 2016. The new SSP applies to *preliminary plans* filed after January 1, 2017, but is silent on its application to conditional uses. Because the adequate public facilities determination under the preliminary plan is still valid, the question of which SSP applies is irrelevant except to whether any taxes will be due at the time of building permit. Because any taxes due will be assessed at building permit, the Hearing Examiner need not make a finding on this.

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. *Inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59-1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* As specified in §59-7.3.1.E.1.g., quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a Group Day Care facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Group Day Care facility (Exhibit 23, p. 13): (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting. The Hearing Examiner agrees with that listing of inherent characteristics of a Group Day Care.

Staff concluded that the conditional use as proposed will have no non-inherent adverse impacts. In addition to the generous number of on-site and on-street parking spaces, Staff found (Exhibit 27(a)):

The drop-offs and pick-ups will be limited by the conditions of approval of the proposed use. The play area is adequate, and the number of children outside at one time will be limited to no more than six, except for four times a year for special events. The scheduled outdoor play times will also be limited by the conditions of approval to be only from 9:15 a.m. to 5:15 p.m., ensuring that children are playing in the back yard only when many in the neighborhood will likely not be in their residences so that the noise generated will have little negative impact on nearby neighbors.

At the public hearing, Mrs. Duggal requested that she be allowed to have up to 12 children outside for one hour in the late morning. She testified that active play helps with the nap time that follows lunch. The Hearing Examiner finds that the additional children will not cause undue harm to the neighborhood. Staff provided no rationale for its limitation of 6 children at all times. Certainly, Mrs. Duggal now has eight children at a time outside without any known complaints. The Hearing Examiner also notes that these children are young—none will exceed 7 years of age. Finally, Mrs. Duggal testified that she would agree to a condition specifying that this one hour could occur between 11:00 a.m. and 12:00 p.m., a time when few of her neighbors are home. The Hearing Examiner finds that the additional hour of play with all children outside will not adversely affect the surrounding area.



***2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.***

Conclusion: As observed by Technical Staff (Exhibit 27(a), p. 13), “The proposal is for the expansion of an existing day care facility in an existing house; no construction, reconstruction or alteration of any structure is proposed.” The Hearing Examiner finds that this requirement is not applicable to the proposed group day care.

***3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

**B. Development Standards of the Zone (Article 59-4)**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-90 Zone. Development standards for the R-90 Zone are contained §59-4.4.8.B of the Zoning Ordinance. Staff compared the minimum development standards of the R-90 Zone to those provided by the application in a table included in the Staff Report (Exhibit 27(a), pp. 9-10), which is reproduced on the following page.

Development Standards	Required/Permitted	Proposed
Minimum Lot Area: (Section 59.4.4.8.B.1)	9,000 sq. ft.	17,471 sq. ft.
Minimum Lot Width at Front Building Line (Section 59.4.4.8.B.1)	75 feet	±79 feet
Minimum Lot Width at Front Lot Line (Section 59.4.4.8.B.1)	25 feet	±59 feet
Maximum Density (Section 59.4.4.8.B.1)	1.94 units (4.84 dwelling units/acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.8.B.1)	30 percent	±9.49%
Minimum Front Setback (Section 59.4.4.8.B.2)	30 feet	±48feet

Development Standards	Required/Permitted	Proposed
Minimum Side Setback (Section 59.4.4.8.B.2)	8 feet	±11 feet
Minimum Sum of Side Setbacks (Section 59.4.4.8.B.2)	25 feet	±27 feet
Minimum Rear Setback (Section 59.4.4.8.B.2)	25 feet	±40 feet
Maximum Height (Section 59.4.4.8.B.3)	35 feet	±26.6 feet

**Comparison of R-90 Developments Standards with Existing  
Physical Improvements  
Exhibit 27**

Conclusion: As can be seen from the above table, the proposed use meets or exceeds all the development standards of the R-90 Zone, as provided in Zoning Ordinance §59-4.4.8.B.

**C. Use Standards for a Group Day Care for 9 to 12 Persons (Section 59-3.4.4.D.)**

The specific use standards for approval of a Group Day Care for 9 to 12 Persons are set out in Section 59-3.4.4.D. of the Zoning Ordinance. The Hearing Examiner's findings on each standard are outlined below:

**1. Defined**

***Group Day Care (9-12 Persons) means a Day Care Facility for 9 to 12 people where staffing, operations, and structures comply with State and local regulations and the provider's own children under the age of 6 are counted towards the maximum number of people allowed.***

Conclusion: The Applicant does not have any children under the age of 6 living in the house. Exhibit 27(a), p. 10. The proposed use will allow a maximum of 12 children to use the day care.

**2. Use Standards**

***a. Where a Group Day Care (9-12 Persons) is allowed as a limited use, it must satisfy the following standards:***

***i. The facility must not be located in a townhouse or duplex building type.***

***ii. In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (see Section 3.4.4.E).***

***iii. In a detached house, no more than 3 non-resident staff members are on-site at any time.***

***iv. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.***

Conclusion: A Group Day Care requires a conditional use in the R-90 Zone. However, the conditional use standards incorporate the limited use requirements, as discussed in the next paragraph.

***b. Where a Group Day Care (9-12 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards and Section 7.3.1, Conditional Use.***

Conclusion: The Hearing Examiner finds that all of the limited use standards, incorporated into the conditional use standards, are satisfied in this case, in that:

- i) The facility is not located in a townhouse or duplex; it is in a detached, single-family home;
- ii) The Applicant is the provider and a resident;
- iii) No more than three non-resident staff members will be on-site at any time; and
- iv) The subject site is not located in the AR Zone.

Furthermore, as discussed in Part III.A., above, and the application meets the “necessary findings” required by *Zoning Ordinance*, §59-7.3.1. The Hearing Examiner finds that the application satisfies all of the use standards in Zoning Ordinance §59-3.4.4.D.

#### **D. General Development Standards (Article 59-6)**

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs.<sup>5</sup> Many of the standards in Article 59-6 do not apply to the proposed group day care facility. Only standards that are applicable will be discussed below.

##### **1. Parking Spaces Required**

Conclusion: The standards for the number of parking spaces required, parking facility design and parking facility screening are governed by Division 6.2 of the Zoning Ordinance. However, because the subject site is a detached home and is not required to have a parking facility with 5 or more parking spaces, the Code sections pertaining to parking facility design and screening do not apply in this case. *See Zoning Ordinance §§59-6.2.5.A.1 and 59-6.2.9.A.3.*

The required number of parking spaces is established by Zoning Ordinance §59-6.2.4. That section requires a total of 3 parking spaces for the subject site (2 spaces for the single-family dwelling and 1 for the non-resident employee.) Staff found that there are 8 on-site parking spaces, two in the garage (satisfying the 2 required for the residence) and 6 in the driveway. In addition,

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<sup>5</sup> The following provisions do not apply to the proposed use: Section 59-6.1.2 (site access requirements) does not apply in single-family detached zones, such as the R-90 Zone; Section 59-6.4.4.E, governing exterior lighting for conditional uses applies only to new lighting fixtures; Section 59-6.2.5, requiring screening of parking areas, does not apply to conditional uses in single-family detached homes that require fewer than 5 parking spaces; Section 59-6.5, governing site screening and landscaping, has limited application, as discussed in the main text.

on-street parking is permitted on Vestry Court. A table from the Staff Report compares the number of vehicle and bicycle spaces required with what is provided on the property (Exhibit 27, p. 10, reproduced below:

<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	<b>Group Day Care: 1 (1/employee) Dwelling: 2  On-street parking allowed</b>	<b>Group Day Care: 1 on- street employee space Dwelling: 2 on-site  Drop Off / Pick Up: Up to 6 on-site spaces in the driveway</b>
<b>Bicycle Parking Requirement (Section 59.6.2.4.C)</b>	<b>Group Day Care: 1 Long-Term</b>	<b>Applicant must provide one long-term bicycle space, preferably in the garage.</b>

The Applicant requested a waiver of the required bicycle space. Both the Planning Board and Staff supported the waiver because neither parents nor the employee bike to the site. There is no room in the garage for the bicycle storage locker. Staff considered it “highly unlikely” that these transportation patterns would change. Staff concluded that construction of the locker on the exterior of the property could alter the property’s residential appearance because the locker and additional screening are not typically associated with single-family detached homes in the R-90 Zone. Exhibit 27, p. 7. Having no evidence to the contrary, the Hearing Examiner’s grants the Applicant’s request for a waiver of the bicycle parking space.

Based on this record, the Hearing Examiner concludes that the Applicant will be compliant with the cited sections of the Zoning Ordinance.

## **2. Site Landscaping and Screening**

The standards for landscaping and screening are set forth in Division 6.5. Although some provisions in this portion of the Zoning Ordinance contain very specific requirements for perimeter

landscaping, conditional uses housed in single-family, detached homes require only an assessment of compatibility. *Zoning Ordinance*, §59-6.5.2.B. This language is reinforced by Section 59-7.3.1.E.1.b., under which the Hearing Examiner need only find that the proposed use meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . .”

Conclusion: The Applicant proposes no changes to the existing landscaping and screening on-site. This includes various trees, gardens and shrubs, and a 6-foot high privacy fence in the rear yard. Staff concluded that, “[T]he existing on-site landscaping and screening will continue to ensure the compatibility of this conditional use to the surrounding neighborhood.” Exhibit 27(a), p. 8. The Hearing Examiner finds that the existing landscaping, including the privacy fence, is compatible with the surrounding neighborhood.

### **3. Signage**

Conclusion: The use of signage is governed by Zoning Ordinance Division 6.7. Although Zoning Ordinance §59-6.7.8.A.1 sets the standards for signs in Residential Zones, no sign is proposed for the subject conditional use. Therefore, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision which will prohibit the Applicant from posting a sign on the property.

## **IV. CONCLUSION AND DECISION**

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Veenu Duggal (CU 17-09), for a conditional use under Section 59-3.4.4.D. of the Zoning Ordinance, to operate a Group Day Care for up to 12 children in her home at 17216 Vestry Court, Rockville, Maryland, is hereby **GRANTED**, subject to the following conditions:



1. The proposed Group Day Care facility is limited to 12 children up to 7 years in age.
2. No more than two non-resident employees may be on-site at any one time.
3. The hours of operations are limited to Monday through Friday, 7:00 A.M. to 6:00 P.M.
4. Parent drop-off and pick-up of children must be staggered with no more than two vehicles entering and exiting the site in any 15-minute period. The Applicant must require adherence to the assigned drop-off and pick-up time in its agreement with parents.
5. Outside play time may not occur prior to 9:15 A.M. or after 5:15 P.M.
6. All 12 children may be outside at one time between 11:00 a.m. and 12:00 p.m., Monday through Friday, and up to four times a year for special events. At all other times, no more than six children can be outside at one time.
7. The rear deck must be kept in structurally sound and safe repair.
8. The Applicant must not erect a sign on the subject site.
9. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Group Day Care for children, and must correct any deficiencies found in any government inspection.
10. The Applicant must not use a public address system of any kind outside the building, and must not allow any amplified music to be played outside the building.
11. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis. Toys which are designed to be kept outdoors are not considered debris.
12. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations,

directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 14th day of April, 2017.



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Lynn A. Robeson  
Hearing Examiner

### NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59-7.3.1.F.1.c., as amended by Zoning Text Amendment (ZTA) No. 16-16, adopted on February 7, 2017, by Ordinance No. 18-25, effective February 27, 2017. The procedural amendments to the Zoning Ordinance contained in ZTA No. 16-16 have not yet been codified, but you may view them on the Council's website at [http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2017/20170207\\_18-25.pdf](http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2017/20170207_18-25.pdf)

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of

record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTICES TO:

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